

## REMARKS

Applicant intends this response to be a complete response to the Examiner's **2 February 2010** Election/Restriction Requirement. Applicant has labeled the paragraphs in his response to correspond to the paragraph labeling in the Office Action for the convenience of the Examiner.

## DETAILED ACTION

The Examiner states and contends as follows:

1. The Preliminary amendment filed 18 May 2006 is acknowledged and entered.

Applicants acknowledge this statement.

The Examiner states and contends as follows:

2. Please note that the Serial Number of the instant non-provisional Application under prosecution at the United States Patent and Trademark Office (*i.e.*, USPTO) is 10/579,640. Please ensure that the correct U.S. Serial Number (*i.e.*, 10/579,640) for this Non-Provisional U.S. application (*i.e.*, USSN) is cited in all future correspondence with this Office.

Applicants acknowledge the Examiner's statements.

The Examiner states and contends as follows:

3. The assigned Art Unit location for the instant application (*i.e.*, 10/579,640) at the USPTO is 1657. To aid in correlating any papers for the instant application (*i.e.*, 10/579,640), all further correspondence regarding this application should be directed to Art Unit 1657.

Applicants acknowledge the Examiner's statements.

The Examiner states and contends as follows:

4. The assigned Examiner to your above-cited application (*i.e.*, 10/579,640) at the USPTO is Kailash C. Srivastava. To aid in correlating any papers for this application, all further correspondence regarding this application (*i.e.*, 10/579,640) should be directed to Examiner Kailash C. Srivastava in Art Unit 1657.

Applicants acknowledge the Examiner's statements.

## Claims Status

The Examiner states and contends as follows:

5. Claims 1-30 are pending.

Applicants acknowledge that 30 claims are pending.

## *Election Restriction*

The Examiner states and contends as follows:

6. This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1 and 37 C.F.R. §1.475. Restriction to one of the following inventions is required under 35 U.S.C. §121 and §372.

In accordance with rules cited supra, applicant(s) is/are required, in reply to this Office Action, to select a single invention to which the claims must be restricted.

- Group I, consisting of claims 1-13 drawn to a composition comprising brine solution and a pollutant having a salinity between about 3% and ABOUT 15% further comprising an effective amount of a covalent cation among  $Ba^{2+}$ ,  $Ca^{2+}$ ,  $Mg^{2+}$ ,  $Sr^{2+}$  or mixtures thereof to produce a divalent to monovalent cation mole ratio of at least 0.05, wherein said brine solution is capable of supporting and maintaining the growth of a microbial culture that degrades the pollutant.
- Group II, consisting of claims 14-30, drawn to a method to feed a contaminated brine solution and a divalent cation precursor to a biological reactor containing a mixed bacterial population, wherein said bacterial population degrades at least one contaminant under anoxic/anaerobic conditions and said precursor is sufficient to maintain a divalent to monovalent cation mole ratio at a numeric value of  $\geq$  at least 0.05 and degrade the contaminant in said solution to a desired concentration at a temperature sufficient to maintain nutrient environment in the reactor, wherein pollutant is a perchlorate or nitrate.

**Inventions are Independent and Distinct**

7. The inventions listed in Groups I-II above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons: The patent rules under 37 C.F.R. § 1.475 for Unity of Invention (Paragraphs (a), (b) and (c)) are cited below:

**§1.475 Unity of Invention before the International Searching Authority, the International Preliminary Examining Authority and during the National Stage**

(a) An International and National Stage Application shall relate to one invention only, or to a group of inventions so linked as to form a general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as whole, makes over the prior art.

(b) An International or a National stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn only to one of the following combinations of categories:

- (1) A product and a process specially adapted for the manufacture of said product; or
- (2) A product and process of use of said product; or
- (3) A product, a process specially adapted for the manufacture of the said product, and a use of the said product; or
- (4) A process and an apparatus or means specifically designed for carrying out the said process; or
- (5) A product, a process specially adapted for the manufacture of the said product, and an apparatus or means specifically designed for carrying out the said process.

(c) If an application contains claims to more or less than one of the combinations of categories of invention set forth in paragraph (b) of this section, unity of invention might not be present.

Inventions described in Groups I-II supra fall within category [I] [(2), a product and a method of use of said product] [II].

8. The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

PCT Rule 13.2 does not provide for multiple compositions, or multiple methods of making a composition, or multiple methods of use of a composition within a single application. Thus, the first

appearing composition is combined with a corresponding first method of making said composition (if applicable) and/or use of said composition. However, the additional composition and method claims each constitute a separate inventive Group.

In addition to the requirement that a Group of inventions must belong to one of the specific categories provided by PCT Rule 13.2, the inventions in the category, *e.g.*, as a composition and a method of use of said composition, must have a special technical feature that unites them. See Patent rules under 37 C.F.R. 5 1.475, where a special technical feature is a contribution OVER THE PRIOR ART.

The special technical feature of the group I composition is a culture medium comprising certain concentration of cations and percentage of saline (*i.e.*, NaCl) to support bacterial growth which is well known in the relevant art (see for *e.g.*, U.S. Patent 6,077,429, Abstract, Figures 1-3, Column 9, Line 55- Column 10, Line 37).

The special technical feature of Group II is a method to load a bioreactor with a pollutant containing stream comprising brine or wastewater and bacteria that degrade the pollutants (*i.e.*, perchlorate or nitrate or both) and processes to decontaminate said pollutants containing streams in a bioreactor, with or without ion exchange resin. The biodegradation of pollutants in a wastewater stream/saline containing stream, and removal of said pollutants in a bioreactor is again well known in the relevant art (see, *e.g.*, U.S. Patent U.S. Patent 6,077,429 as indicated above and additionally, Column 10, Line 38 to Column 11, References I, 5,7-15 and 23) and Okeke et al., (2002. Reduction of perchlorate and nitrate by salt tolerant bacteria. Environmental Pollution, Volume 118, Pages 357-363), Abstract. Page 358, Column 2, Lines 4-37; Page 358, Column 2, Line 4 to Page 359, Column 2, Line 49; Page 360, Column 1, Lines 2-37; Page 360, Column 2, Lines 1-2 and 16-36 and Figures 1-2). Furthermore, the product and method can be restricted because the alleged special technical feature is not a contribution over the art.

9. In accordance with 37 C.F.R. §1.499, applicant (s) is/are required, in response to this action, to elect a single invention to which the claims must be restricted.

Applicant(s) is/are advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement is traversed (37 C.F.R. §1.143).

10. Applicant (s) is/are reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 C.F.R. §1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 C.F.R. §1.48(b) and by the fee required under 37 C.F.R. §1.17(i).

11. The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and a product claim is subsequently found allowable, withdrawn process claims that depend from or otherwise include all the limitations of the allowable product claim will be rejoined in accordance with the provisions of M.P.E.P. §821.04. **Process claims that depend from or otherwise include all the limitations of the patentable product will be entered as a matter of right if the amendment is presented prior to final rejection or allowance, whichever is earlier.** Amendments submitted after final rejection are governed by 37 C.F.R. §1.116; amendments submitted after allowance are governed by 37 C.F.R. §1.312.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 C.F.R. §1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. §101, §102, §103, and §112. Until an elected product claim is found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowed product claim will not be rejoined. See "Guidance on Treatment of Product and Process Claims in light of *In re Ochiai*, *In re Brouwer* and 35 U.S.C. 5 103(b)," 1184 O.G. 86 (March 26, 1996). Additionally, in order to retain the right to rejoinder in accordance with the above policy, Applicant is advised that the process claims should be amended during prosecution either to maintain dependency on the product claims or to otherwise include the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double patenting rejections of 35 U.S.C. §121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See M.P.E.P.

§804.01.

Applicants traverse the restriction requirement. The method utilizes the composition and without the composition the method is not functional for its intended purpose. Therefore, the two groups share the most essential common feature, the composition that permits the biodegradation to occur. Applicants can think of no better instance where the two groups are so interwoven as is here. Under MPEP guidelines such interconnectedness argues against restriction and for joint examination. Applicants, therefore, respectfully request withdrawal of this restriction requirement.

**If the Examiner maintains the restriction requirement, Applicants elect Group II, claims 14-30.**

If it would be of assistance in resolving any issues in this application, the Examiner is kindly invited to contact applicant's attorney Robert W. Strozier at 713.977.7000

**The Commissioner is authorized to charge or credit Deposit Account 501518 for any additional fees or overpayments.**

Date: **25 February 2010**

Respectfully submitted,

**/Robert W. Strozier/**

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